

## **First Judicial District of Pennsylvania**

*51CR00047732011*

*Johnnie Simmons*

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*Trial (Jury) Volume 3  
December 13, 2011*



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*First Judicial District of Pennsylvania  
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[1] IN THE COURT OF COMMON PLEAS  
[2] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
[3] CRIMINAL TRIAL DIVISION  
[4] ---  
[5]  
[6] COMMONWEALTH : CP-51-CR-0004773-2011  
[7] :  
[8] V. :  
[9] :  
[10] JOHNNIE SIMMONS :  
[11] ---  
[12] Courtroom 802, Criminal Justice Center  
[13] Philadelphia, Pennsylvania  
[14] ---  
[15] December 13, 2011  
[16] ---  
[17] Jury Trial  
[18] Volume IV  
[19] ---  
[20] B E F O R E: THE HONORABLE SANDY L. V. BYRD, J.  
[21] **APPEARANCES:**  
[22] STACY FORCHETTI, ESQUIRE  
[23] Assistant District Attorney  
[24] For the Commonwealth  
[25] VINCENT LORUSSO, ESQUIRE  
Counsel for the Defendant  
Jaclyne Wilson

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[1] **THE COURT:** We are back on the record in  
[2] our trial case. This is the case of Commonwealth  
[3] vs. Johnnie Simmons. The defendant is here with his  
[4] attorney, Mr. Lorusso. And the Commonwealth by  
[5] Ms. Forchetti.  
[6] Counsel, as I advised the two of you at  
[7] sidebar, the jury has a question. I'm going to read  
[8] it into the record and I'll have you respond as you  
[9] see fit as to your position regarding how the Court  
[10] should answer the concerns raised.  
[11] Question, Your Honor, we the jury have  
[12] **the following questions:** One, may we review all  
[13] Commonwealth and defense exhibits minus the medical  
[14] records?  
[15] Two, may we have the written description  
[16] of all the charges?  
[17] Three, may we see --  
[18] **MS. FORCHETTI:** I believe it says "both,"  
[19] Your Honor.  
[20] **THE COURT:** Both written testimony from  
[21] Richard Alexander and Kyle Holman. Signed, Juror  
[22] No. 8.  
[23] So the first question, Mr. Lorusso, I'll  
[24] hear from you and then from Ms. Forchetti. May we  
[25] review all Commonwealth and defense exhibits minus  
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[1] the medical records? What's your view on that?  
[2] **MR. LORUSSO:** My view, Your Honor, would  
[3] be that they should only see the photographs and the  
[4] map. No documentary evidence.  
[5] **THE COURT:** Commonwealth?  
[6] **MS. FORCHETTI:** Your Honor, I believe  
[7] that's appropriate. That they may place undue  
[8] reliance on certain police documents. Also, not  
[9] every portion of every police document was admitted  
[10] into evidence.  
[11] **THE COURT:** So you're in agreement with  
[12] the defense then?  
[13] **MS. FORCHETTI:** I am.  
[14] **THE COURT:** Counsel, please correct me if  
[15] I'm wrong, but I asked the two of you on yesterday  
[16] anticipating such a question if you could go through  
[17] the various exhibits and identify the ones that you  
[18] agreed to go out and I believe that the ones that  
[19] you articulated are those. So I have the following:  
[20] Commonwealth Exhibit 1, 2, 4, 5, 6 and 7 are  
[21] photographs. Commonwealth Exhibit 27, 26, 25, 24  
[22] and 23 are also photographs, all of which should go  
[23] out, and Commonwealth Exhibit 10, which is the photo  
[24] spread and Defense Exhibit 1, which is the map.  
[25] Does anybody know what Commonwealth  
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[1] Exhibit 3 was?  
[2] **MS. FORCHETTI:** I do, Your Honor. It  
[3] was -- I believe, it was a police document. It was  
[4] the statement, the 75-483, of Officer Alexander.  
[5] **THE COURT:** So it was not a photograph?  
[6] **MS. FORCHETTI:** It was not.  
[7] **THE COURT:** So the aforementioned items,  
[8] are we in agreement that they can go out?  
[9] **MR. LORUSSO:** Yes, Your Honor.  
[10] **MS. FORCHETTI:** Yes, Your Honor.  
[11] **THE COURT:** Okay. I'm going to give that  
[12] to Mr. Ferguson and the remainder of these will go  
[13] back.  
[14] The second question, May we have a  
[15] written description of all the charges?  
[16] Mr. Lorusso?  
[17] **MR. LORUSSO:** As is within the Court's  
[18] discretion my position would be that they -- if they  
[19] want an oral instruction, that that should be again  
[20] provided but appreciating that it's within the  
[21] Court's discretion, I leave it to the Court.  
[22] **THE COURT:** It is a discretionary matter.  
[23] I typically do not provide the written instructions  
[24] but I always defer to counsel.  
[25] What's your position?  
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[1] **MS. FORCHETTI:** I think that's fine to  
[2] give it to them. I think it might be preferable to  
[3] have it read to them but I have no problem with them  
[4] reviewing it on their own.

[5] **THE COURT:** Off the record.  
[6] (Off the record.)

[7] **THE COURT:** I advised counsel off the  
[8] record that I had prepared these written  
[9] instructions. I'm aware that it's my discretion but  
[10] as I said before, I will abide by counsel's  
[11] position.

[12] Mr. Lorusso, what's your position?

[13] **MR. LORUSSO:** I would ask Your Honor to  
[14] read -- to recharge the jury on what they requested,  
[15] I guess, assuming that that would answer their  
[16] request.

[17] **THE COURT:** Ma'am?

[18] **MS. FORCHETTI:** I think that will be  
[19] appropriate to recharge them on the counts.

[20] **THE COURT:** Are you in agreement?

[21] **MR. LORUSSO:** Yeah, and actually I guess,  
[22] if Your Honor please, we're assuming that that's  
[23] what they want, you know, reinstruction on the  
[24] charges but that's not really what they've asked so  
[25] I wonder --

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[1] ask for specific, we ask the jury to identify a  
[2] specific part of the testimony that they wanted,  
[3] often time, and this is an illustration, one of the  
[4] jurors in a case I had wanted to know if the witness  
[5] testified that the truck was green or blue. So we  
[6] identified the portion in the direct evidence where  
[7] the witness makes a reference to the color of the  
[8] truck and then the defense says, But I crossed on  
[9] that, and the cross covers because typically you  
[10] don't just zero in on one thing and be done with it,  
[11] there are instances where it's been zeroed in on and  
[12] then later on in the cross you come back to it, so  
[13] the entire cross of the defense, arguably, covers  
[14] what color the truck was. Just a thought.

[15] **MS. FORCHETTI:** Okay.

[16] **THE COURT:** All right.

[17] **MR. LORUSSO:** I would object to throwing  
[18] that out there in terms of giving them another  
[19] option to request specifics.

[20] **THE COURT:** The point is well taken  
[21] except that if there is a particular area of  
[22] disagreement amongst the jurors, and we are just  
[23] speculating here, that can be easily resolved by a  
[24] reference to the testimony and both of you agree  
[25] it's in the direct and in the cross, then we should

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[1] **THE COURT:** If they asked for the written  
[2] description of the charges, I assume that they  
[3] want --

[4] **MR. LORUSSO:** I guess I would assume  
[5] that.

[6] **THE COURT:** -- to be recharged.

[7] **MR. LORUSSO:** I would assume that also.  
[8] That would be my request.

[9] **THE COURT:** All right. And the last one  
[10] is, May we see both written testimony from Richard  
[11] Alexander and Kyle Holman.

[12] Mr. Lorusso?

[13] **MR. LORUSSO:** Your Honor, I think as we  
[14] had discussed, in light of the length of the  
[15] testimony and for obvious other reasons, my request  
[16] would be that Your Honor simply instruct them that  
[17] they need to rely upon their own recollection of the  
[18] testimony instead of having it reread to them.

[19] **THE COURT:** Ms. Forchetti?

[20] **MS. FORCHETTI:** Your Honor, I'm of a  
[21] similar mind. I would also further instruct them  
[22] that if they asked a more specific question, maybe  
[23] we could accommodate that request.

[24] **THE COURT:** I have no aversion to doing  
[25] that except to point out to the two of you when we  
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[1] make every effort to address that. So it's  
[2] problematic either way. All right.

[3] Let's bring them out.  
[4] (Jury enters the courtroom at 12:16 p.m.)

[5] **THE COURT:** Good afternoon, ladies and  
[6] gentlemen.

[7] Would the foreperson please rise and  
[8] identify yourself by seat number.

[9] **JUROR FOREPERSON:** Juror No. 8,  
[10] Your Honor.

[11] **THE COURT:** Mr. Foreman, does the jury  
[12] have a question or communication for the Court?

[13] **JUROR FOREPERSON:** Yes, Your Honor, we  
[14] do.

[15] **THE COURT:** Would you read it exactly as  
[16] it appears in your writing.

[17] **JUROR FOREPERSON:** Yes, Your Honor.  
[18] Number 1, may we review all Commonwealth's and  
[19] defense exhibits minus the medical records?

[20] Number 2, may we have the written  
[21] description of all charges?

[22] And lastly, may we please see both  
[23] written testimonies from Officer Richard Alexander  
[24] and Kyle Holman?

[25] **THE COURT:** Thank you.  
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[1] **JUROR FOREPERSON:** Thank you, Your Honor.

[2] **THE COURT:** Ladies and gentlemen, you can  
[3] appreciate that there are certain rules of court  
[4] which governs what can and cannot go out into the  
[5] deliberation room with the jury, and so I am unable  
[6] to provide you with all of the exhibits because our  
[7] Supreme Court prohibits certain documents being sent  
[8] out with a deliberating jury.

[9] The following exhibits are permissible  
[10] for purposes of sending out to a deliberating jury  
[11] and they will, of course, be provided to you. They  
[12] include the various photographs, Commonwealth's  
[13] Exhibits 1, 2, 4, 5, 6, 7, 23, 24, 25, 26, 27 and in  
[14] addition the photographic array, Commonwealth  
[15] Exhibit 10, and the map which is Defense Exhibit 1  
[16] will be provided to you. The other documents cannot  
[17] be sent out as the rules prohibit same.

[18] Your third question asks, May we see both  
[19] written testimony from Richard Alexander and Kyle  
[20] Holman? Jurors are not permitted to have  
[21] transcriptions of testimony in the deliberation  
[22] room. In fact, as you might conclude, the testimony  
[23] has not yet been transcribed. So even if it were  
[24] available, it could not go out to you.

[25] There are instances when a jury can  
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[1] certain act. Commonwealth alleges that he shot  
[2] Charles Talbert.

[3] Second, that at the time of this alleged  
[4] act the defendant had the specific intent to kill  
[5] Charles Talbert. That is he had a fully formed  
[6] intent to kill and was conscious of his own  
[7] intention.

[8] And, third, that this act constituted a  
[9] substantial step toward the commission of the  
[10] killing the defendant intended to bring about. The  
[11] specific intent to kill must be willful, deliberate  
[12] and premeditated. The specific intent to kill,  
[13] including premeditation, does not require planning  
[14] or previous thought or any particular length of  
[15] time. It can be formed in an instant. All that is  
[16] necessary is that there be time enough so that the  
[17] defendant can and does fully form an intent to kill  
[18] and is conscious of that intention.

[19] When you are deciding whether the  
[20] defendant had the specific intent to kill, you  
[21] should consider all of the evidence regarding his  
[22] words and conduct and attending circumstances that  
[23] may show his state of mind. If you believe that the  
[24] defendant intentionally used a deadly weapon on a  
[25] vital part of the complainant's body, you may regard

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[1] request and have read back portions of the testimony  
[2] of a witness if there is some area that you can  
[3] identify that you wish to have addressed. However,  
[4] I want you to appreciate that despite the length of  
[5] time that the case consumed, the testimony from  
[6] Officer Alexander and Mr. Holman was not terribly  
[7] long in length and you, ladies and gentlemen, paid  
[8] great attention and of equal importance those who  
[9] wished had the ability to take notes and you are  
[10] instructed to rely upon your recollection and, of  
[11] course, make use of your notes.

[12] The second question asks for a written  
[13] description of all the charges and I am of the mind  
[14] that you wish to have each of the offenses explained  
[15] to you again, and I shall do that.

[16] Ladies and gentlemen, there are five  
[17] crimes charged in this case: Attempted murder,  
[18] aggravated assault, possession of an instrument of  
[19] crime, carrying a firearm without a license and  
[20] conspiracy. I shall define each in turn.

[21] First, attempted murder. The defendant  
[22] has been charged with attempted murder. To find him  
[23] guilty of this offense, you must find that the  
[24] following three elements have been proven beyond a  
[25] reasonable doubt. First, that the defendant did a

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[1] that as circumstantial evidence from which you may,  
[2] if you choose, infer that the defendant had the  
[3] specific intent to kill.

[4] What remains is a description of  
[5] substantial step. A person cannot be guilty of an  
[6] attempt to commit a crime unless he does an act that  
[7] constitutes a substantial step toward the commission  
[8] of that crime. An act is a substantial step if it  
[9] is a major step toward the commission of a crime and  
[10] also strongly corroborates the jury's belief that  
[11] the person at the time he did that act had a firm  
[12] intent to commit the crime. An act can be a  
[13] substantial step even though other steps would have  
[14] to be taken before the crime could be carried out.

[15] If after considering all of the evidence  
[16] you find that the Commonwealth has proven the three  
[17] elements just stated beyond a reasonable doubt, then  
[18] you should find the defendant guilty of attempted  
[19] murder. Otherwise, you must find him not guilty of  
[20] that offense.

[21] The second offense charged is aggravated  
[22] assault. The defendant has been charged with  
[23] aggravated assault. To find him guilty of this  
[24] offense, you must find that each of the following  
[25] two elements have been proven beyond a reasonable

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[1] **doubt:** First, that the defendant caused serious  
[2] bodily injury to Charles Talbert. Serious bodily  
[3] injury is bodily injury that creates a substantial  
[4] risk of death or that causes serious permanent  
[5] disfigurement or protracted loss or impairment of  
[6] the function of any bodily member or organ.  
[7] And, second, that the defendant acted  
[8] either intentionally, knowingly or recklessly under  
[9] circumstances manifesting extreme indifference to  
[10] the value of human life. What do we mean by  
[11] intentionally, knowingly or recklessly? A person  
[12] acts intentionally with respect to serious bodily  
[13] injury when it is his conscious object or purpose to  
[14] cause such injury. A person acts knowingly with  
[15] respect to serious bodily injury when he is aware  
[16] that it is practically certain that his conduct will  
[17] cause such a result. A person acts recklessly with  
[18] respect to serious bodily injury when he consciously  
[19] disregards a substantial and unjustifiable risk that  
[20] serious bodily injury will result from his conduct.  
[21] The risk must be of such a nature and  
[22] degree that considering the nature and intent of the  
[23] defendant's conduct and the circumstances known to  
[24] him, its disregard involves a gross deviation from  
[25] the standard of conduct that a reasonable person  
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[1] defendant at the time of the alleged offense under  
[2] circumstances not manifestly appropriate for lawful  
[3] uses it may have. That a thing could somehow  
[4] facilitate the possible commission of a crime is not  
[5] enough. To be an instrument of crime a thing must  
[6] be something that the defendant would need to use in  
[7] the commission of the underlying offense.  
[8] And, third, that the defendant possessed  
[9] that item with the intent to employ it criminally.  
[10] That is with the intent to attempt or to commit a  
[11] crime with it. The Commonwealth has charged here  
[12] that the crime the defendant intended to commit with  
[13] the instrument alleged was assault and/or murder.  
[14] If after considering all of the evidence  
[15] you find that the Commonwealth has proven the  
[16] elements just stated beyond a reasonable doubt, then  
[17] you should find the defendant guilty of possession  
[18] of an instrument of crime. Otherwise, you must find  
[19] him not guilty of this offense.  
[20] The next offense charged against the  
[21] defendant is carrying a firearm without a license.  
[22] The defendant has been charged with carrying a  
[23] firearm without a license in violation of Section  
[24] 6106 of the Uniform Firearms Act. To find him  
[25] guilty of this offense, you must find that each of  
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[1] would observe in the defendant's situation. It is  
[2] shown by the kind of reckless conduct from which a  
[3] life threatening injury is almost certain to occur.  
[4] If after considering all of the evidence  
[5] you find that the Commonwealth has proven the  
[6] elements just stated beyond a reasonable doubt, then  
[7] you should find the defendant guilty of aggravated  
[8] assault. Otherwise, you must find him not guilty of  
[9] this crime.  
[10] The third offense charged is possession  
[11] of an instrument of crime; to wit, a firearm. In  
[12] order to find the defendant guilty of possessing a  
[13] criminal instrument as charged in this case you must  
[14] be satisfied that the following three elements have  
[15] been proven beyond a reasonable doubt: First, that  
[16] the defendant possessed a certain item. That is a  
[17] firearm. For a person to possess an item, he must  
[18] have the power to control and the intent to control  
[19] that item.  
[20] And, second, that the item was an  
[21] instrument of crime. What is an instrument of  
[22] crime? An instrument of crime is either anything  
[23] specially made for criminal use or anything  
[24] specially adapted for criminal use or anything that  
[25] is used for criminal purposes and possessed by the  
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[1] the following three elements have been proven beyond  
[2] **a reasonable doubt:** First, that the defendant  
[3] carried a firearm concealed on or about his person.  
[4] What is a firearm? Any pistol or  
[5] revolver with a barrel less than 15 inches, shotgun  
[6] with a barrel less than 18 inches, rifle with a  
[7] barrel less than 16 inches or any pistol, revolver,  
[8] rifle or shotgun with an overall length of less than  
[9] 26 inches. To be a firearm the specific object  
[10] charged must be operable. That is capable of firing  
[11] a projectile.  
[12] Second, that the defendant was not in his  
[13] place of abode. That is his home or his fixed place  
[14] of business.  
[15] And, third, that the defendant did not  
[16] have a valid and lawfully issued license for  
[17] carrying a firearm.  
[18] If after considering all of the evidence  
[19] you find that the Commonwealth has proven the three  
[20] elements just stated beyond a reasonable doubt, then  
[21] you should find the defendant guilty of carrying a  
[22] firearm without a license. Otherwise, you must find  
[23] him not guilty of this offense.  
[24] Lastly, the defendant is charged with  
[25] conspiracy. He's charged with conspiracy to commit  
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[1] assault and/or murder. In Pennsylvania, joining a  
[2] conspiracy or creating a conspiracy is itself a  
[3] crime. Even if the crime the people are planning to  
[4] commit is not carried out, the members of a  
[5] conspiracy are still responsible for the distinct  
[6] crime of conspiracy.

[7] In general terms, a conspiracy is an  
[8] agreement between two or more persons to commit a  
[9] crime. A conspiracy exists once two conditions are  
[10] met. There is an agreement and one of the members  
[11] then commits some act to help achieve the goal of  
[12] the conspiracy.

[13] The first element of conspiracy is an  
[14] agreement. It can be stated in words or unspoken  
[15] but acknowledged. But it must be an agreement in  
[16] the sense that two or more people have come to an  
[17] understanding that they agree to act together to  
[18] commit a crime or crimes. Their agreement does not  
[19] have to cover the details of how the crime will be  
[20] committed. Nor does it have to call for all of them  
[21] to participate in actually committing the crime or  
[22] crimes. They can agree that one of them will do the  
[23] job. What is necessary is that the parties do  
[24] agree, in other words, do come to a firm, common  
[25] understanding that a crime will be committed.

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[1] that is a common understanding and whether the  
[2] conspirators shared the intent to promote or  
[3] facilitate the commission of the object crime or  
[4] crimes. Thus, you may, if you think it proper,  
[5] infer that there was a conspiracy from the  
[6] relationship, conduct and acts of the defendant and  
[7] his alleged coconspirator and the circumstances  
[8] surrounding their activities. However, the evidence  
[9] of this must support your conclusion beyond a  
[10] reasonable doubt.

[11] In this case the Commonwealth alleges  
[12] that the defendant conspired with another unknown  
[13] person. In this case the Commonwealth alleges that  
[14] the crime or crimes of assault and/or murder were  
[15] the objective of the conspiracy. In this case the  
[16] Commonwealth alleges that the following was an overt  
[17] **act**: To wit, the defendant shot the complainant.

[18] In order to find the defendant guilty of  
[19] conspiracy to commit assault and/or murder, you must  
[20] be satisfied that the following three elements have  
[21] been proven beyond a reasonable doubt: First, that  
[22] the defendant agreed with the other person that one  
[23] or both of them would engage in conduct for the  
[24] planning and commission of the crime assault and/or  
[25] murder.

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[1] Although the agreement itself is the  
[2] essence of the conspiracy, a defendant cannot be  
[3] convicted of conspiracy unless he or a fellow  
[4] conspirator does something more, does an overt act  
[5] in furtherance of the conspiracy. The overt act is  
[6] an act by any member of the conspiracy that would  
[7] serve to further the goal of the conspiracy. The  
[8] overt act can be criminal or noncriminal in itself  
[9] as long as it is designed to put the conspiratorial  
[10] agreement into effect. This is to show that the  
[11] parties have a firm agreement and are not just  
[12] thinking or talking about committing a crime. The  
[13] overt act shows that the conspiracy has reached the  
[14] action stage. If a conspirator actually commits or  
[15] attempts to commit the agreed upon crime or crimes,  
[16] that obviously would be an overt act in furtherance  
[17] of their conspiracy. But a small act or step that  
[18] is much more preliminary and a lot less significant  
[19] can satisfy the overt act requirement.

[20] The Commonwealth may prove a conspiracy  
[21] by direct evidence or by circumstantial evidence.  
[22] People who conspire often do so secretly and cover  
[23] up afterwards. In many conspiracy trials,  
[24] circumstantial evidence is the best or only evidence  
[25] on the question of whether there was an agreement,

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[1] Second, that the defendant and the other  
[2] person intended to promote or facilitate the  
[3] commission of that crime or those crimes, assault  
[4] and/or murder. In other words, they shared the  
[5] intention to bring about that crime or those crimes  
[6] or to make it easier to commit the crime assault  
[7] and/or murder.

[8] And, third, that the defendant or the  
[9] other person did the act that is alleged to have  
[10] been an overt act and did it in furtherance of their  
[11] conspiracy. As a general rule, if conspirators have  
[12] agreed to commit a crime and after that one of the  
[13] conspirators does any act to carry out or advance  
[14] their agreement, then he has done an overt act in  
[15] furtherance of their conspiracy. The other  
[16] conspirator does not have to participate in the act  
[17] or even know about it. In a sense they are partners  
[18] and like partners they are responsible for each  
[19] others actions.

[20] So, ladies and gentlemen, I have  
[21] redefined the offenses charged. You should know  
[22] that you may and you should call on the Court if you  
[23] have any additional concerns, questions, comments or  
[24] statements. I have identified for you the items  
[25] that can be sent out and they will be sent out.

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[1] So with that I am going to ask you,  
[2] ladies and gentlemen, to return and continue your  
[3] deliberations.  
[4] **JUROR FOREPERSON:** Thank you, Your Honor.  
[5] **THE COURT:** Thank you.  
[6] (Jury exits the courtroom at 12:39 p.m.)  
[7] **THE COURT:** Let the record reflect that  
[8] the jurors have left the room. I'm going to hand  
[9] counsel the agreed upon exhibits so that it's clear  
[10] to the two of you, and I want you to go through it  
[11] and make sure that's what we agreed upon, so there's  
[12] nothing going out that you have not agreed upon.  
[13] (Pause.)  
[14] **THE COURT:** Mr. Lorusso?  
[15] **MR. LORUSSO:** That's what we agreed upon,  
[16] Your Honor.  
[17] **THE COURT:** Any objection?  
[18] **MR. LORUSSO:** No, Your Honor.  
[19] **MS. FORCHETTI:** No, Your Honor.  
[20] **THE COURT:** Thank you both. If you have  
[21] any additional words of wisdom, I'll hear it.  
[22] **MR. LORUSSO:** I don't.  
[23] **MS. FORCHETTI:** Not at this time.  
[24] **THE COURT:** Okay. All right. Their  
[25] lunch is here. I know that the two of you are  
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[1] them out now and send them home.  
[2] **MS. FORCHETTI:** I don't think ten minutes  
[3] will make much of a difference, Your Honor.  
[4] **MR. LORUSSO:** That would be my thought  
[5] also, Your Honor.  
[6] **THE COURT:** What?  
[7] **MR. LORUSSO:** I'm sorry. That we just  
[8] bring them out now.  
[9] **THE COURT:** If you're in agreement,  
[10] that's what I'll do.  
[11] **MS. FORCHETTI:** Okay.  
[12] **THE COURT:** By the time we've dismissed  
[13] them, it will be five o'clock. So it's actually  
[14] five minutes to 5:00. That clock is five minutes  
[15] slow so the attorneys are not late to the courtroom.  
[16] (Jury enters the courtroom at 4:55 p.m.)  
[17] **THE COURT:** Good afternoon, ladies and  
[18] gentlemen. It is, as you can see, coming up on five  
[19] o'clock and you, ladies and gentlemen, have been in  
[20] deliberations since 9:00 this morning. So I think  
[21] it's appropriate that we recess for the day. I must  
[22] instruct you anew to keep an open mind. Don't  
[23] discuss the case while you're apart. Don't permit  
[24] anyone to discuss the case with you. Enjoy your  
[25] evening and we will resume tomorrow morning at nine  
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[1] entitled to lunch and I suggest that you should be  
[2] free for an hour and thereafter either return or be  
[3] some place where we can reach you.  
[4] (Deliberations.)  
[5] **THE COURT:** We are back on the record in  
[6] our trial case, Commonwealth vs. Johnnie Simmons,  
[7] CP-51-CR-0004773-2011. Mr. Simmons is here with his  
[8] attorney, Mr. Lorusso. The Commonwealth by  
[9] Ms. Forchetti.  
[10] Counsel, it's getting on to ten minutes  
[11] till 5:00. I'm inclined to recess until tomorrow  
[12] morning. If you have an alternative approach, I'll  
[13] hear. Ms. Forchetti?  
[14] **MS. FORCHETTI:** No. I believe that's  
[15] appropriate, Your Honor. They haven't communicated  
[16] to us that they are at all close or asked any  
[17] questions.  
[18] **THE COURT:** They had the question  
[19] earlier, which I answered in the presence of the  
[20] attorneys and the defendant. I've not heard  
[21] anything. There had not been any communications  
[22] since then. So they are obviously working. I am  
[23] reluctant to make any inquiries unless the two of  
[24] you agree that any inquiry is appropriate. We can  
[25] either wait until 5:00 and send them home or bring  
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[1] o'clock.  
[2] Thank you, ladies and gentlemen.  
[3] (Jury exits the courtroom at 4:56 p.m.)  
[4] **THE COURT:** If everyone would remain in  
[5] place until the jurors have left the floor, I'd  
[6] appreciate it.  
[7] (Hearing adjourned at 5:00 p.m.)  
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